

**In the Matter of
REQUEST FOR REVIEW and/or
WAIVER OF DECISION OF UNIVERSAL SERVICE ADMINISTRATOR**

**CHENEY PUBLIC SCHOOL DISTRICT 360
Cheney, Washington**

CC Docket No. 02-6

Re: Applicant Name: CHENEY PUBLIC SCHOOL DISTRICT 360
 Billed Entity No: 145439
 Form 471 App. No.: 1025869
 Funding Request No.: 2785994
 Funding Year: 2015-2016
 Decision Letter Date: September 4, 2015
 Decision on Appeal Date: January 6, 2016

I. INTRODUCTION

Pursuant to 47 C.F.R. § 54.719(c), the Cheney Public School District 360 (the "District") appeals to the FCC from the Universal Service Administrative Company, Schools & Libraries Division ("USAC") Administrator's Decision on Appeal – Funding Year 2015-2016, dated January 6, 2016. That decision dismissed the District's letter of appeal, finding that the appeal was post-marked beyond the 60 day deadline and therefore "FCC rules do not permit USAC to consider your appeal." Accordingly, USAC did not consider the merits of the District's appeal related to an RAL correction that was not processed prior to USAC's issuance of the District's Funding Commitment Determination Letter (FCDL). This appeal and request for waiver to the FCC follows.

The District requests that the FCC waive Commission rule 47 C.F.R. §54.720(b) that requires petitioners to file appeals within 60 days of an adverse decision by USAC. The District further requests a remand of the matter to USAC for review, analysis, and decision on the merits of the District's original letter of appeal, dated December 7, 2015. As set forth below, good cause exists for waiver of this FCC deadline.¹

II. ATTACHMENTS

In support of this Request for Review and/or Request for Waiver, the District provides the following documents:

- Attachment 1: Administrator's Decision on Appeal, January 6, 2016
- Attachment 2: Letter of Appeal to USAC, December 7, 2015, with supporting documents including RAL Correction
- Attachment 3: Form 471, App. No. 1025869, Excerpts
- Attachment 4: Funding Commitment Decision Letter, September 4, 2015, Excerpts

Affidavit of Shirley L. Bauer, Ed.D., with attachments.

III. STATEMENT OF FACTS

The District is a small public school district in Washington state, serving approximately 4000 students. On March 30, 2015, the District, through its Consultant, Shirley Bauer, Ed.D., E-Rate & Educational Services LLC, Consultant #16062408, submitted Form 471 Application No. 1025869. (Attachment 3). The Form 471 included

¹ The FCC may waive any provision of its rules for good cause shown. 47 C.F.R. §1.3; *In the Matter of Request for Review and/or Waiver of the Decision of USAC by Glendale Unified Sch. Dist.*, CC Docket No. 02-6, SLD-143548, DA 06-244, at para. 4 (February 1, 2006).

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multiple Funding Request Numbers setting forth the estimate of funds needed to cover discounts to be given for eligible services. This included FRN No. 2785994 for telephone service. (Attachment 3, pp. 11-13).

Unfortunately, the telephone service FRN contained a typographical error and so reflected one month of service rather than 12 months of service.² (Affidavit of Shirley L. Bauer, Ed.D., ¶ 3). Upon receipt of the 471 Receipt Acknowledgement Letter (RAL), this error was discovered. In fact, USAC had included on the RAL for this FRN the following notation:

Number of months of service 1

You have applied for less than 12 months of service for this FRN. If this is not correct, please submit a RAL correction. If this is correct, no action is recommended. (Attachment 2, p. 3).

An allowable correction of the service start date to July 1, 2015, which encompassed 12 months of eligible service, was submitted via the RAL Process. (Attachment 2, pp. 2-3). The RAL was received by USAC on March 30, 2015 and a case number issued, No. 22741485. (Affidavit of Shirley L. Bauer, Ed.D., ¶ 4).

Despite a pending correction on file for the affected FRN, USAC issued its Funding Commitment Determination Letter (FCDL) funding the District's telephone service based upon the originally filed erroneous FRN. (Attachment 4, p. 4). The failure of USAC to process the revised service start date prior to issuing the FCDL caused a large reduction in the funded amount of FRN 2785994. Specifically, this error resulted in

² The remaining 15 FRNs included on the Form 471 correctly identified 12 months of eligible service.

a loss to the District of \$8664.26 in eligible discounts. (Affidavit of Shirley L. Bauer, Ed.D., ¶ 7). The FCDL was issued on September 4, 2015.³

The error in the FCDL in failing to reflect the correct service start date was not discovered by the Consultant until December 5, 2015. Upon follow up by the Consultant to the District due to a failure to receive telephone invoices for submission to USAC, Consultant learned that a new employee for the District had been sending all invoices to an incorrect email address for Consultant. Consultant's email address is sbauer@esd101.net and the District employee had been sending invoices to shirleybower@esd101.net. At the end of November 2015, already past the 60 day appeal deadline for disputes regarding the September 4, 2015 FCDL, the Consultant began actually receiving telephone invoices from the District. On December 5, 2015, when the invoices were finally received and the Consultant began processing them, the Consultant discovered the error with the FCDL. (Affidavit of Shirley Bauer, Ed.D., ¶ 6).

By the time of discovery, more than 60 days had passed from the September 4, 2015 issuance of the FCDL. Despite this, an appeal was filed with USAC as soon as reasonably possible. The District's appeal was dated December 7, 2015, two days following discovery of the USAC error. (Attachment 2).

³ The FCDL contained the following notation on all 16 FRNs: "Comment on RAL corrections: FRN(s) modified in accordance with a RAL request." See Attachment 4, pp. 3-4. However, despite this notation being included on the affected FRN, that FRN was not revised to reflect the RAL correction on file. A separate FRN, FRN 2785384, had been revised pursuant to an RAL correction during the PIA process. (Attachment 3, pp. 8-10; Attachment 4, p. 3; Affidavit of Shirley L. Bauer ¶ 5) It was this correction that apparently resulted in the "Comment on RAL corrections" being included on every FRN page.

On January 6, 2016, USAC dismissed the District's appeal on procedural grounds, finding that failure of the District to file within the FCC's 60 day appeal window denied USAC the ability to otherwise consider and decide the appeal. (Attachment 1).

IV. DISCUSSION

Prior decisions of the FCC have waived the deadline to appeal to USAC when good cause exists for doing so. Good cause is found when special circumstances demonstrate a reasonable basis for the delay and equity principles support the granting of the waiver.⁴ Good cause exists in this case. First, missing a deadline is a procedural rather than a substantive violation. Second, staffing problems that result in inadvertent errors provide a reasonable basis for waiver. Third, equity principles support waiver of the appeal deadline so that substantive consideration can be given to the District's appeal. It was USAC's error that resulted in a loss of funding following the District's good faith utilization of the RAL correction process. Failure to waive the appeal deadline results in a denial of 11 months of eligible discounts by default because it denies USAC the opportunity to correct its error. Finally, when denial of funding would create an undue hardship, as it would here, the FCC often waives deadlines and procedures.

A. Missing a Deadline is a Procedural Violation

The District requests that the FCC waive a procedural, non-substantive rule, namely the requirement of 47 C.F.R. §54.720(b) that appeals must be post-marked not

⁴ *Streamlined Resolution of Requests Related to Actions by USAC*, CC Docket Nos. 96-45 and 02-6, DA 15-875 at p. 4; *Request for Waiver by Marconi Communications, Inc.: Schools and Libraries Universal Service Support Mechanism*, CC Docket No. 02-6, Order, 27 FCC Recd 6197 at para. 2 (Wireline Comp. Bur. 2012).

more than sixty (60) days after the issuance of the FCDL being appealed. FCC rulings hold that missing a deadline “does not constitute a substantive violation, but a procedural one.”⁵ The FCC has also stated that rejection of applications that involve “a processing deadline, not a program rule” is unwarranted.⁶ In allowing these appeals, the FCC reasons “that rigid adherence to such procedures does not further the purpose of section 254(h) of the Telecommunications Act of 1996 or serve the public interest.”⁷

As the FCC has routinely recognized, “many E-rate program beneficiaries, particularly small entities, contend that the application process is complicated, resulting in a significant number of applications for E-rate support being denied for ministerial, clerical or procedural errors.”⁸ In such instances, the FCC has found that denials of the underlying applications are not warranted when “due to unintentional administrative or clerical errors, and the records...do not reveal more fundamental problems, such as misuse of funds or a failure to adhere to program requirements.”⁹

The FCC’s determination to distinguish between the types of error involved is not surprising in light of the dictates of The Communications Act of 1934. This Act directs

⁵ *In the Matter of Request for Review of the Decision of the Universal Service Administrator by Bishop Perry Middle School*, CC Docket No. 02-6, SLD-487170, *et. al.* at para. 19 (May 19, 2006).

⁶ *In the Matter of Requests for Review of the Decision of the Universal Service Administrator by Alpaugh Unified School Dist., et. al.*, CC Docket No. 07-36, SLD-523576 at para. 5 (March 28, 2007).

⁷ *Id.*, see also 47 U.S.C. § 254(h).

⁸ *In the Matter of Requests for Review of the Decisions of the Universal Service Administrator by Archer Public Library*, CC Docket No. 02-6, SLD 140961 *et. al.* at para. 7 (October 30, 2008).

⁹ *Id.*

the FCC to “enhance ... access to advanced telecommunications and information services for all public and non-profit elementary and secondary school classrooms.”¹⁰ A denial of funding based on procedural errors “inflicts undue hardship on the applicants.”¹¹

Here, the District seeks a waiver of the 60 day deadline for filing an appeal to USAC. Granting the waiver of this procedural rule permits the substantive appeal to be considered. The appeal deadline was missed due to unintentional errors by a new staff person that precluded timely review of the FRN in order to recognize that it was in error. Undoubtedly, USAC’s error in failing to process the RAL correction prior to issuance of the FCDL was also an unintentional error. There is no harm involved in waiving the appeal deadline so that USAC can correct the error, thereby authorizing the eligible discounts to which the District is entitled.

B. Staffing Problems Support A Waiver

A critical issue for the FCC in granting appeals is staffing problems experienced by districts in navigating the complex E-rate process. The District has contracted with the Consultant because it lacks the in-house expertise to handle its own applications and reimbursement requests. (Affidavit of Shirley L. Bauer, Ed.D., ¶ 2). The District had a new employee, Ms. Gillard, who failed to utilize the correct email address for the District’s E-rate Consultant. Although the information was not being timely received, it is undisputed that Ms. Gillard was making good faith efforts to provide the

¹⁰ *Id.* at para. 8.

¹¹ *Id.*

documentation required, sending multiple invoices to the Consultant over a multi-month period but using the wrong email address. But for this clerical error that delayed receipt of documents by the Consultant, the error in the FCDL would have been discovered earlier. (Affidavit of Shirley L. Bauer, Ed.D., ¶ 6).

The FCC has ruled that staffing problems resulting in the untimely filing of documentation is an acceptable reason to waive deadlines.¹² That is the circumstance here. Moreover, the Consultant filed the appeal within a reasonable time of discovering the error in the FCDL; the appeal was filed within two days of discovery.¹³ (Affidavit of Shirley L. Bauer, Ed.D., 7).

C. Equity Principles Support A Waiver

In considering a waiver, the Commission may take into account considerations of equity and implementation of overall policy goals.¹⁴ Granting a waiver of the appeal deadline is equitable so that USAC will have the opportunity to correct the error in the FCDL to reflect the allowable correction that the District had brought to USAC's attention via USAC's own RAL correction process. That process allows correction of "ministerial and clerical errors" made on an applicant's 471, which was the type of error involved here. (Affidavit of Shirley L. Bauer, Ed.D., ¶ 4). Allowable corrections include data entry errors or mistakes and errors in dollar figures on FRNs. The affected FRN

¹² *Alpaugh Unified School Dist., et. al.*, supra n. 3, at para. 4.

¹³ *See, e.g., Marconi Communications Inc.*, supra n.2, at para. 2 (granting waiver of appeal deadline because petitioner submitted appeal to USAC within a reasonable period of time after receiving actual notice of USAC's adverse decision).

¹⁴ *Glendale Unified*, supra n.1, at para. 4; *WAIT Radio v. FCC*, 418 F.2d 1153, 1157 (D.C. Cir. 1969), *aff'd*, 459 F.2d 1203 (D.C. Cir. 1972), *cert. den.*, 409 U.S. 1027 (1972).

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contained a typographical error, reflecting one month of service rather than 12. All other FRNs on the applicable Form 471 correctly identified 12 months of service. Importantly, the District was eligible for 12 months of service and this is not a case of waste, fraud, or intentional failure to comply with any of the substantive rules of the program. (Affidavit of Shirley L. Bauer, Ed.D., ¶ 8). A waiver is appropriate when an applicant adhered to the core program requirements.¹⁵

D. Undue Hardship

Finally, not granting a waiver of the appeal deadline results in the continued application of an erroneous funding determination. The erroneous FCDL represents a denial of eleven months of telephone service funds to the District. This will create an undue hardship for the small District and the students it serves. (Affidavit of Shirley L. Bauer, Ed.D., ¶ 8). This is the type of hardship the FCC has repeatedly acknowledged as a reason for waving its procedural rules.¹⁶

Moreover, we find that denying petitioner's requests would create undue hardship and prevent these otherwise eligible schools and libraries from receiving funding that they need to bring advanced telecommunications and information services to their students and patrons. By contrast, waiving . . . our rules to the limited extent necessary . . . will further the goal of section 254 of the Act – ensuring access to discounted telecommunications and information services to schools and libraries – and therefore serve the public interest.¹⁷

¹⁵ *Glendale Unified Sch. Dist.*, *supra* n. 1, at para 5.

¹⁶ *In the Matter of Requests for Review or Waiver of Decisions of the Universal Service Administrator by Brownsville Independent School District*, CC Docket No. 02-6, SLD-482620, *et. al.*, at para. 10 (March 28, 2007).

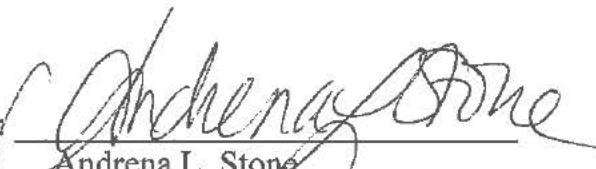
¹⁷ *In the Matter of Requests for Review of the Decisions of the Universal Service Administrator by Academy of Excellence, et al.*, CC Docket No. 02-6, SLD-261209, *et. al.*, at para. 9 (May 8, 2007).

V. CONCLUSION

The District has provided a reasonable basis for its delay in meeting the 60 day deadline for bringing an appeal to USAC. The District respectfully requests that the Commission therefore grant a waiver of the appeal deadline and remand the matter back to USAC with direction that USAC conduct a complete review and analysis of the District's original appeal.

DATED at Anchorage, Alaska this 3rd day of March, 2016.


JERMAIN DUNNAGAN & OWENS, P.C.

By 
Andrena L. Stone
Alaska Bar No. 9411127

CERTIFICATE OF SERVICE

This is to certify that on this 3rd day of March, 2016, a true and correct copy of the foregoing was mailed, postage prepaid, to:

Schools and Libraries Division
Universal Service Administrative Company
30 Lanidex Plaza West
P.O. Box 685
Parsippany, New Jersey 07054-0685


Christina Bennett